

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 05-1046(E) DSF Date April 18, 2008

Present: The Honorable DALE S. FISCHER, UNITED STATES DISTRICT JUDGE

Interpreter N/A

PAUL PIERSON <i>Deputy Clerk</i>	NOT PRESENT <i>Court Reporter</i>	DANIEL SAUNDERS KEVIN LALLY (NOT PRESENT) <i>Assistant U.S. Attorney</i>
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U.S.A. v. Defendant(s):	Present	Cust.	Bond	Attorneys for Defendants:	Present	App.	Ret.
1) ANTHONY PELLICANO	NOT	X		1) PRO SE			
2) MARK ARNESON	NOT		X	2) CHAD HUMMEL	NOT		X
3) RAYFORD EARL TURNER	NOT		X	3) MONA SOO HOO	NOT		X
4) KEVIN KACHIKIAN	NOT		X	4) ADAM BRAUN	NOT		X
6) ABNER NICHERIE	NOT		X	6) LAWRENCE SEMENZA	NOT		X

Proceedings: (In Chambers) Order DENYING Defendant Terry Christensen’s Motion for a Temporary Restraining Order

Before the Court is the motion by defendant Terry Christensen for a temporary restraining order “enjoining Allison Hope Weiner from all further publication, dissemination, or broadcast . . . of Confidential Information” as defined in the protective order in this case. (Christensen Mot. at 1-2.)

Weiner is a journalist who has written about this case for the New York Times and now writes about the case for the internet publication The Huffington Post. As such, Christensen’s request for an injunction against publication of information by Weiner is a request for a prior restraint against a member of the media.¹

¹ Christensen’s argument to the contrary and his argument that the proposed injunction is “content-neutral” are perplexing. Christensen is seeking a restraint against future publication of specific content by a member of the media. His contention that the potentially unlawful release of the materials in question changes the analysis is unfounded. A paradigmatic prior restraint case, New York
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First Amendment considerations raise a high bar for any prior restraint. “[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” Nebraska Press Ass’n v. Stuart, 427 U.S. 539, 559 (1989). Further, “the protection against prior restraint should have particular force as applied to reporting of criminal proceedings.” Id. Before entering a prior restraint against reporting on a trial, a court should consider “(a) the nature and extent of pretrial news coverage; (b) whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; and (c) how effectively a restraining order would operate to prevent the threatened danger.” Id. at 562. A prior restraint is not appropriate unless “further publicity, unchecked, would so distort the views of potential jurors that 12 could not be found who would, under proper instructions, fulfill their sworn duty to render a just verdict exclusively on the evidence presented in open court.” Id. at 569.

Christensen has not met his heavy burden. The particular recordings that Christensen is most concerned to suppress – those involving himself – were published, at least in excerpts, by the New York Times in early 2007. (See Christensen Mot. at 3-4.) This earlier publication undercuts the effectiveness of any prior restraint that the Court might enter now. In addition, Christensen makes no effort to demonstrate that publication of the recordings on a website would so taint the jury pool that no group of twelve impartial jurors could be found for his trial.²

Christensen further moves for an evidentiary hearing regarding the source of the recordings at issue in order to determine the identity of the violator of the protective order. While the Court may have the authority to compel Weiner to testify in this context, see Farr v. Pitchess, 522 F.2d 464, 469 (9th Cir. 1975), the Court declines to do so. Given the extensive prior publication of information otherwise protected by the protective order, there would be little value in forcing Weiner to identify her sources at this late juncture.

Christensen’s motion is DENIED.

IT IS SO ORDERED.

Initials of Deputy Clerk: *PdP*

Times Co. v. United States, 403 U.S. 713 (1971), involved the publication of the Pentagon Papers, which were revealed to the newspapers in violation of national security statutes. See id. at 754 (Harlan, J., dissenting).

² If Christensen believes that the protective order prevents him from making a substantive response to media allegations, he may make a motion – in camera if it will reveal presently protected information – for limited relief from that order.